

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF**

77-1390

To be argued by
BARRY BASSIS

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

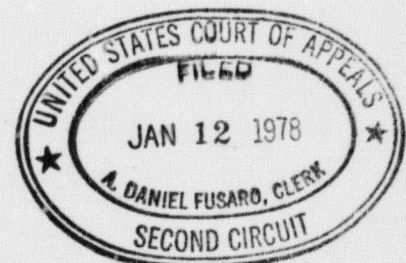
GUILLERMO MORENO, HUGO GOMEZ,
WILSON ARROYO-ANGULO, and
JAIME RAYO,

Defendants-Appellants.

Bp/s
Docket No. 77-1390

1/12
BRIEF FOR APPELLANT
WILSON ARROYO-ANGULO

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



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Defendants-Appellants.

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BRIEF FOR APPELLANT
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FOR THE SOUTHERN DISTRICT OF NEW YORK

QUESTIONS PRESENTED

1. Whether the denial of appellant's motion for a severance resulted in substantial prejudice for the defense because of the curtailment of critical cross-examination as well as the necessity to hold extended in camera proceedings.

2. Whether appellant's admissions should have been excluded from evidence under Rule 11(e)(6) of the Federal Rules of Criminal Procedure and Rule 410 of the Federal Rules of Evidence as being plea-related.

STATEMENT PURSUANT TO RULE 28(a)(3)

PRELIMINARY STATEMENT

This appeal is from a judgment of the United States District Court for the Southern District of New York (The Honorable Kevin Thomas Duffy) rendered on July 21, 1977, after a trial before a jury, convicting appellant Arroyo-Angulo of conspiracy to violate the federal narcotics laws (21 U.S.C. §§812, 841(a)(1) and 841(b)(1)(a), 846, 951, 952, 960) and possession with intent to distribute and distribution of cocaine (21 U.S.C. §§812, 841(a)(1), 841(b)(1)(a) and 18 U.S.C. §2). Appellant was sentenced to concurrent terms of 15 years' imprisonment, to be followed by a special parole term of three years.

By order of this Court dated September 28, 1977, The Legal Aid Society, Federal Defender Services Unit, was continued as counsel to Mr. Arroyo-Angulo on appeal, pursuant to the Criminal Justice Act.

STATEMENT OF FACTS

The defendants were charged with conspiring between December 20, 1975, and February 19, 1976, to import quantities of cocaine from Colombia, as well as with the substantive offense of possessing with intent to distribute and distributing cocaine in Manhattan on February 19, 1976. Appellant Arroyo-

Angulo's sole participation was allegedly that of a swimmer who retrieved cocaine from a ship docked in the Port of San Francisco. The key issues on this appeal pertain to appellant Arroyo-Angulo's admissions as a cooperating informer and his inability to mount a defense when joined with the persons about whom he had given information.

I. The Government's Case

The key prosecution witness was Emilio Rivas, who was arrested on February 19, 1976, in Manhattan, with one kilogram of cocaine. Rivas had been selling large quantities of cocaine and marijuana since 1971 and had several arrests and convictions (176-183, 194*). He supplemented his drug profits by working at United Parcel, where he was fired after signing a confession that he was part of a ring of jewelry thieves (173-175). Rivas, who had previously been deported as an illegal alien, had also once owned two butcher shops (167, 204-207). As a liar, Rivas was both prolific and versatile -- he had lied informally and under oath, in oral statements and in signed affidavits, before judges, Department of Immigration officials, government attorneys, his own lawyers, parole officers, and Drug Enforcement Administration agents. He induced his wife to sign false affidavits, and appropriated the names of friends to conceal his own criminal

*Numerals in parentheses refer to pages of the minutes of trial dated May 23 to June 23, 1977.

activities (475-477, 493-494, 497-498, 519, 531-534, 609).

When arrested in possession of a kilogram of cocaine which he had arranged to sell to an undercover agent, Rivas was eager to cooperate, and named his source as a man named "Charlie" (466, 580). The agents placed a recorder on Rivas and sent him out to meet "Charlie," but the latter never materialized (469-470). Rivas adhered to his story, claiming that he was merely a "delivery boy" throughout his plea and sentence (493-494). One month after he was sentenced to a 20-year prison term plus six years' special parole (210-211), Rivas gave the following version of the facts, which was essentially the Government's direct case at trial:

In the early 1960's, one of Rivas' frequent suppliers of drugs was a man named Cambindo. The two lost contact for awhile, but renewed their business dealings when Anna ("Sheila") Moreno and Antonio Renteria became tenants in Rivas' house in Brooklyn. The women were friends of Cambindo and aunts of co-defendant Moreno (195, 198-199, 202-203, 206). In September of 1975, Rivas went to San Francisco with Cambindo and several others to pick up six kilograms of cocaine which belonged to Cambindo (228-231). During the trip, Rivas met Moreno,*

*Moreno called as a witness Lilia Davila, his cousin, who testified that Rivas and Moreno had known each other since childhood in Buenaventura, Colombia (2027-2030).

Ahon-Casquete,* Rayo, and appellant Arroyo-Angulo, whose nickname was "Mata de Miel," or "Honey Plant" (228, 243-245, 290-291).

In November and December of 1975, Moreno visited his aunts in Rivas' building. When Rivas complained about the scarcity of drugs, Moreno told him of a shipment scheduled to arrive in San Francisco (267-270). Following Moreno's directions, Rivas flew to California with Anna Moreno (272-273). For about two weeks, Rivas stayed in an apartment that Moreno had rented for Hugo Gomez, who arrived with a friend several days later (277-279, 281). Toward the end of January, the ship, a vessel of the Gran Colombiana Line, arrived. Rivas drove appellant Arroyo-Angulo and Rayo to the pier, where the two, who had told Rivas about other swims they had made for narcotics, changed into diving suits (332-333, 365-366). When Rivas returned to pick them up, appellant Arroyo-Angulo was emerging from the water with a package, which they took to the apartment where Rivas was staying (366-368). The two swimmers left while the others opened the package, revealing small bags of white powder, which Rivas believed to be cocaine (370, 381). Appellant Arroyo-Angulo and Rayo returned to count the packages to determine their earnings (372). Rivas flew back to New York the following day with 48 ounces of cocaine (394-395). After

*Ahon-Casquete was named in the indictment as a co-conspirator, but Judge Duffy dismissed the charges against him during trial (1973).

cutting the drugs, Rivas sold small quantities, and was arrested in Manhattan while trying to sell one kilogram (395-399). Although Rivas claimed that he would cut cocaine by adding lactose and dextrose (184), a chemical analysis of the drugs seized showed not only sugar, but lidocaine and borates (855).

The Government sought to bolster the testimony of Rivas, who had a Rule 35 motion pending at the time, by various forms of documentary proof (such as airline tickets dating from January 1976 for Moreno's aunt and Rivas, who used the name of his partner in the butcher shop), observations of the defendants, and similar act testimony. There were few references to appellant during the month-long trial. The prosecution introduced photographs of appellant with several co-defendants (1512-1513, 1597) as well as testimony that he had been seen with them or had been observed at Moreno's building or in the area of the piers (1432-1433, 1445, 1464-1465). On May 27, 1974, appellant Arroyo-Angulo, Rayo, and two other men were arrested while driving away from the pier. Although Rayo was wearing a wet diving suit, no narcotics were found by the DEA agents (1522-1524, 1583-1596). Rayo and appellant Arroyo-Angulo each possessed a piece of paper with the same writing (1619).

II. Arroyo-Angulo's Admissions

A. Motion to Suppress the Statements

The most critical evidence against appellant Arroyo-Angulo was the introduction of his admissions of making similar swims for narcotics in different parts of the country. These statements were made by appellant while he was a cooperating informant of the Drug Enforcement Administration and were the subject of a suppression hearing held during trial, out of the presence of the jury as well as the other defendants and their attorneys.*

In late October 1975, appellant, who had been arrested by the Immigration and Naturalization Service as a stowaway, was approached by DEA Agent William Martin. After being given Miranda warnings, appellant admitted that he had worked as a free-lance swimmer for drugs (1623, 1626-1631). Appellant was paroled to the custody of the Drug Enforcement Administration and flown to San Francisco, where he entered into an informal agreement with DEA Agent Fiorentino that he could remain on the street if he contacted the agent every day, supplying him with information and refraining from criminal activities (1039-

*The minutes of these proceedings (1036-1152) are sealed. The testimony of Agents Martin and Allen, who acted as interpreters for Agent Fiorentino, was taken in open proceedings in the presence of the jury subsequent to the hearing.

References to sealed proceedings are made only where the matters alluded to were ultimately revealed on the trial record. None of the information which impelled the district court to seal the minutes is disclosed in this brief.

1040). The agents assured appellant that he would not be deported or prosecuted for past swims so long as he cooperated (1072, 1675). During days of "intensive debriefings" by various agents, appellant told of five pre-October 1975 swims he had made (1040, 1043, 1632-1636) and took the agents to Pier 50 to show them the procedure for picking up narcotics (1641-1644).

On December 3, 1975, appellant testified before a Baltimore grand jury, where he was repeatedly told by the Assistant United States Attorney that he would not be prosecuted on the basis of information he gave at that proceeding (Grand Jury Minutes (sealed exhibit) at 4, 5). After returning to San Francisco, appellant remained in contact with Agent Fiorentino until December 15. On March 18, 1976, the agent, who had located appellant several days earlier, took him back to the DEA office (1048-1050, 1504-1506). The agents renewed the cooperation agreement with appellant (1056, 1699-1700), assuring him that the Drug Enforcement Administration would not prosecute him if he assisted them (1720).

On March 22, 1976, without informing appellant of his Miranda rights (1709), the agents elicited that he had assisted in the retrieval of drugs from a Colombian ship on two occasions: on December 5, 1975, he had worked as a driver; and on March 13, 1976, he had been employed as a swimmer (1710-1711). He made no mention of the acts alleged in the instant case.

Appellant continued his relationship with the agents until

May 27, 1976, when he was arrested with Rayo (see p.6, supra). Appellant was then deported, re-entering the United States in February 1977 (1763).

The district court found appellant's statements to have been voluntary (1569) and, over objection, they were introduced at trial (1636-1641, 1710-1711).

B. The Severance Motion

Prior to trial, counsel for appellant Arroyo-Angulo moved for a severance pursuant to Rule 12 and 14 of the Federal Rules of Criminal Procedure. On May 17, 1977, in oral argument on the motion, counsel asserted that appellant should not be forced to proceed "to trial with people against whom he has been cooperating and giving testimony." The attorney added that, while factual data to support the motion would arise during trial, "the safer remedy would be to sever Mr. Arroyo at the outset, not so much for his benefit as a defendant but the co-defendants" (sealed minutes of May 17, 1977, at 34). The severance motion was renewed at the beginning of trial (155-156) and later in the proceedings (1171-1172, 1182-1187). Counsel argued that a severance was required because of the "conflicting defense strategy" (155) and because he could not develop the background of appellant's admissions at a trial with the other defendants (1187). The motion was denied on each occasion.

After the DEA agent testified about appellant's admissions, Arroyo-Angulo's attorney informed the court, out of the presence of the jury, that he intended to ask questions about appellant's

statements inculpatng three of the co-defendants. Counsel explained that, by eliciting proof that the agents could not substantiate much of the information appellant was providing them, he could show that appellant was leading the agents on in an attempt to remain in this country (1647-1648, 1655-1659). Upon the objections of co-counsel and the Assistant United States Attorney (1652-1653, 1655, 1658), the court refused to permit the cross-examination (1658, 1660). Following Agent Allen's testimony about the resumption of the cooperation agreement in March 1976, counsel was not permitted to show that appellant had mentioned that the co-defendants played a part in his failure to maintain contact during the three-month period (1707, 1704).

C. The In Camera Proceedings

Throughout the trial, extensive proceedings were held from which appellant and his attorney were excluded. The minutes of these proceedings, which constitute approximately 130 pages of the trial record, were sealed by order of the district court. While this appeal was pending, appellate counsel for Arroyo-Angulo moved to examine the sealed minutes and, if necessary, to file a sealed brief. The motion, which was joined by one co-appellant and opposed by the Government and two co-defendants, was denied by this Court on January 3, 1978.

III. Jury Deliberations, Verdict, and Sentence

After hearing the court's charge,* the jury deliberated for two and one-half days before it returned a verdict finding each defendant guilty of both counts charged in the indictment (2337-2368). On July 21, 1977, appellant Arroyo-Angulo was sentenced to concurrent terms of imprisonment of 15 years, to be followed by a three-year special parole term.

*The court's charge, as well as the docket sheets and the indictment, are reproduced in the joint appendix prepared by co-appellant Rayo.

ARGUMENT

Point I

AS A RESULT OF THE DENIAL OF APPELLANT'S MOTION FOR A SEVERANCE, THE DEFENSE SUFFERED SUBSTANTIAL PREJUDICE BY THE CURTAILMENT OF CRITICAL CROSS-EXAMINATION AS WELL AS THE NECESSITY TO HOLD EXTENDED IN CAMERA PROCEEDINGS.

Before trial and throughout the proceedings, Arroyo-Angulo's attorney repeatedly moved for a severance. On each occasion, he urged the court that a separate trial was required because of appellant's role as a cooperating informant who had provided information against his co-defendants. Counsel argued that he could not develop the background of appellant's statements at a joint trial. Upon the protests of the Government, the severance motions were denied. The court thereafter aborted appellant's efforts to attack the credibility of his "admissions" in order to safeguard the co-defendants' rights under Bruton v. United States, 391 U.S. 123 (1968). Appellant was further prejudiced because a joint trial necessitated the holding of numerous secret proceedings to which appellant and his counsel were denied access and the minutes of which have been denied to appellate counsel. Thus, appellant suffered "substantial prejudice," requiring a new trial. See United States v. Borelli, 435 F.2d 500, 502 (2d Cir. 1970), cert. denied, 401 U.S. 946 (1971).

A.

During the months appellant was employed as a cooperating informant of the Drug Enforcement Administration, he was subjected to "intensive debriefing" (1040) and provided the agents with a great deal of information. At trial, the Government selected the most incriminating of his statements -- the admissions of working on numerous occasions as a free-lance swimmer for various people importing drugs into the country. Defense counsel was precluded from cross-examining the agents about the remainder of appellant's admissions. As expounded by Arroyo-Angulo's attorney, the defense theory was that appellant had fabricated the account of his involvement in a drug conspiracy in order to avoid imminent deportation and to remain at liberty in the United States. The only way for the defense to document this theory was to show that appellant had provided much information concerning his co-defendants that was false or misleading. The court's complete curtailment of cross-examination of the agents on this line of inquiry deprived appellant of his right of confrontation as guaranteed by the Sixth Amendment.

The Supreme Court has held that the right of cross-examination "is implicit in the constitutional right of confrontation, and helps assure the 'accuracy of the truth determining process.'" Chambers v. Mississippi, 410 U.S. 284, 295 (1973). In the instant case, the jurors were "entitled to have the benefit of the defense theory before them so that they

could make an informed judgment as to the weight to place on [the agents' testimony regarding appellant's admissions] which provided 'a crucial link in the proof ... of petitioner's act.' Douglas v. Alabama, 380 U.S., at 419." Davis v. Alaska, 415 U.S. 308, 317 (1974); cf. United States v. Ong, 541 F.2d 331, 342 (2d Cir. 1976). While counsel nevertheless argued that appellant's admissions had an "atmosphere of unreality" (2237), the "atmosphere" was too rarefied to sustain the argument because counsel was not permitted to elicit from the agents the amount of false information appellant had provided. In order to make the argument effective, "defense counsel should have been permitted to expose to the jury the facts from which jurors, as the sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of the witness." Davis v. Alaska, supra, 415 U.S. at 318.

The court curtailed cross-examination by Arroyo-Angulo's counsel because to elicit from the agent appellant's statements regarding his co-defendants would have violated their rights of confrontation under Bruton. However, the solution to the problem was not to deny appellant's confrontation rights, but to grant the motion for a severance. Counsel repeatedly brought to the court's attention the unavoidable collision that would result between Arroyo-Angulo's Sixth Amendment rights and those of his co-defendants arising from his statements implicating them. Since the court permitted the Government to introduce appellant's statements indicating guilt, fundamental fairness

demanding that the defense be permitted to introduce the contemporaneous statements of appellant which pointed toward innocence.*

B.

On the subject of in camera proceedings, this Court has recently written:

In camera proceedings are extraordinary events in the constitutional framework because they deprive the parties against whom they are directed of the root requirements of due process, i.e., notice setting forth the alleged misconduct with particularity and an opportunity for a hearing, see Wolff v. McDonnell, 418 U.S. 539 (1974); Boddie v. Connecticut, 401 U.S. 371 (1971). They can only be justified and allowed by compelling state interests. See United States v. Bell, 464 F.2d 667 (2d Cir.), cert. denied, 409 U.S. 991 (1972). Whenever the legal rights of individuals are to be adjudicated, the presumption is against the use of secret proceedings. Cf. Hannah v. Larche, 363 U.S. 420 (1960).

. . .

As the Supreme Court stated in Carroll v. Princess Anne, 393 U.S. 175, 183 (1968), "The value of a judicial proceeding, as against self-help by the police, is substantially diluted where the process is

*Rule 106 of the Federal Rules of Evidence provides:

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require him at that time to introduce any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

A defendant should have a similar right to introduce the remainder of oral statements under Rule 611(a) of the Federal Rules of Evidence.

ex parte because the court does not have available the fundamental instrument of judicial judgment: an adversary proceeding in which both parties may participate.

In re Grand Jury Subpoena
Directing Edward Taylor to
Appear and Testify Before
a Grand Jury, Docket No.
77-1353, slip op. 659, 665-
666 (2d Cir., Dec. 12, 1977).

The instant case was characterized by extensive proceedings in camera, from which appellant and his counsel were excluded.

These secret proceedings were not merely of the sort mentioned in United States v. Moten, Docket No. 77-1085, slip op. 5769, 5788 (2d Cir., Sept. 6, 1977), but entailed complete suppression hearings (such as the hearing as to the admissibility of appellant's statements),* at which one defendant and his attorney would be present but from which the other defendants and their lawyers would be excluded. The closed proceedings were apparently precipitated to some extent by a violent episode, allegedly involving appellant and one co-defendant. Counsel had, in fact, warned of the danger of a physical confrontation between the defendants at a joint trial in his motion for a severance.

*Arroyo-Angulo's counsel had requested that this proceeding be kept secret, but had previously cited as a ground for severance "that most of the issues that would be of greatest relevance for Mr. Arroyo would be in the nature of hearings rather than trial testimony." (Sealed minutes of May 17, 1977, at 35.)

As a further consequence of the joint trial,* appellant has been denied his right to appeal because this Court has declined to allow appellate counsel to examine the voluminous minutes of the ex parte proceedings.** The denial of access to these portions of the record effectively frustrates any appellate rights, since appellate counsel will not have the opportunity to marshal the 2,400-page trial record, the numerous exhibits, and the Brady and 3500 materials in order to demonstrate how the defense was prejudiced by its exclusion from the closed proceedings.

In his oft-cited concurring opinion in Krulewitch v. United States, 336 U.S. 440, 450 (1949), Mr. Justice Jackson pointed out that the "'wide definition of the crime of conspiracy [in Anglo-American law] originates in the criminal equity administered in the Star Chamber.'" The similarity to Star Chamber procedures now becomes more striking as the Government joins for trial in conspiracy cases individuals who pose such a danger to one another that entire hearings at which testimony is taken must be held out of the presence of various defendants and their attorneys. Such secret proceedings are inimical to notions of due process and could have been avoided

*Appellant Arroyo-Angulo adopts the arguments in Point I of co-appellant Moreno's brief that the in camera proceedings violate his rights to the effective assistance of counsel, the confrontation of witnesses, and a public trial.

**Counsel's motion for access to these sealed minutes, totaling approximately 130 pages, for the limited purpose of filing a sealed brief, was denied by this Court on January 3, 1978.

by granting appellant's motion for a severance. Since he was a marginal figure in the conspiracy, who was mentioned but a few times in the month-long trial, a separate trial would have been an appropriate resolution.

Point II

APPELLANT'S ADMISSIONS SHOULD HAVE BEEN
EXCLUDED UNDER RULE 11(e)(6) OF THE FED-
ERAL RULES OF CRIMINAL PROCEDURE AND RULE
410 OF THE FEDERAL RULES OF EVIDENCE AS
PLEA-RELATED.

Appellant was paroled into the custody of the Drug Enforcement Administration and made the admissions in question following assurances by the DEA agents that he would not be prosecuted for past drug offenses if he cooperated. Appellant then provided detailed information about his (and others') involvement in the smuggling of narcotics into the United States. After testifying before a federal grand jury in Baltimore, at which time the United States Attorney again assured appellant that he would not be prosecuted for the information he was providing, appellant lost contact with the DEA agents for three months. In March 1976 the agents located him and renewed the cooperation agreement, after which appellant made further damaging admissions. These statements, which were introduced over repeated objection at trial, should have been excluded under Fed.R.Crim.P. 11(e)(6) and Fed.R.Evid. 410.

Rule 11(e)(6) of the Federal Rules of Criminal Procedure provides:

Except as otherwise provided in this paragraph, evidence of a plea of guilty, later withdrawn, or a plea of nolo contendere, or of an offer to plead guilty or nolo contendere to the crime charged or any other crime, or of statements made in connection with, and relevant to, any of

the foregoing pleas or offers, is not admissible in any civil or criminal proceeding against the person who made the plea or offer. However, evidence of a statement made in connection with, and relevant to, a plea of guilty, later withdrawn, a plea of nolo contendere to the crime charged or any other crime, is admissible in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in the presence of counsel.

The same provision is contained in Fed.R.Evid. 410. These provisions have been given an expansive interpretation so that a defendant may "be free to negotiate without fear that his statements will later be used against him." United States v. Herman, 544 F.2d 791, 796 (5th Cir. 1977). As the Fifth Circuit declared in that case:

Plea bargaining is a tool of conciliation. It must not be a chisel of deceit or a hammered purchase and sale. The end result must come as an open covenant, openly arrived at with judicial oversight. A legal plea bargain is made in the sunshine before the penal bars darken. Accordingly, we must examine plea bargains under the doctrine of caveat prosecutor.

Id., 544 F.2d at 796.

Even an attempt to open plea bargaining has been deemed inadmissible. United States v. Brooks, 536 F.2d 1137, 1139 (6th Cir. 1976). While appellant, a non-English-speaking, uncounselling person,* did not discuss the possibility of pleading guilty, he was nevertheless trying "to work out an arrangement"

*Appellant was quite unlike the "intelligent, experienced businessman" in United States v. Pomares, 499 F.2d 1220, 1222 (2d Cir. 1974).

(United States v. Smith, 525 F.2d 1017, 1020 (10th Cir. 1975)) under which he would not be deported or prosecuted for the drug offenses he subsequently admitted.* Like the accused in Smith, Arroyo-Angulo was "not making a confession, he was seeking to reach an agreement with the authorities and the discussions were directed to that end." Id., 525 F.2d at 1020. That appellant was not represented by counsel is of no consequence in determining the admissibility of his statements under Rule 11(e)(6). United States v. Smith, supra, 525 F.2d at 1021. The fact that DEA agents may have lacked authority to negotiate with appellant is also irrelevant, since they had "all the trappings of officialdom." United States v. Herman, supra, 544 F.2d at 799. After staying appellant's deportation and shuttling him around the country, the agents certainly must have impressed appellant as being the authorized representatives of the Government.

The introduction into evidence of appellant's statements detailing the various swims he had made cannot be deemed harmless error. Other than the testimony of Emilio Rivas, a compulsive liar, there were few references to appellant in the month-long trial. The Government could only verify that appellant was seen with several of the other defendants and sometimes

*Rule 11(e)(6) has been held to cover situations where the defendant bargains with the Government without mentioning the word "plea." United States v. Ross, 493 F.2d 771, 775 (5th Cir. 1974). The rule may be analogized to settlement negotiations in civil cases, which are inadmissible under Fed.R.Evid. 408. United States v. Herman, supra, 544 F.2d at 797.

drove around the area of the San Francisco pier. In the incident on May 27, 1976, no narcotics were found in the car, and appellant was not wearing a wet suit. Thus, the admissions constituted a crucial part of the case against him.*

During the period in which appellant cooperated with the Drug Enforcement Administration and provided information, the DEA agents were his only source of legal advice. On occasion, the agents even dispensed with Miranda warnings. As trial counsel argued (1955), citing Herman, supra, 544 F.2d at 798, "the Government as one of the dancing partners, should not be able to lead its partner to a trap door in the dance floor." This is precisely what the DEA agents did in this case and the court erred in permitting the statements into evidence. Thus, a new trial should be ordered.

*Significantly, while speaking of many swims he had made for large quantities of drugs, appellant never admitted the acts charged in the indictment in this case.

Point III

INSOFAR AS THEY ARE NOT INCONSISTENT WITH
THE ARGUMENTS RAISED HERE, APPELLANT ARROYO-
ANGULO ADOPTS THE ARGUMENTS RAISED ON BEHALF
OF HIS CO-APPELLANTS.

CONCLUSION

For the foregoing reasons, the judgment of the district
court should be reversed and the case remanded for a new trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

January 11 , 1978

corrected

I certify that a ^{corrected} copy of this brief [REDACTED] has been mailed to the United States Attorney for the Southern District of New York. The appendix was filed by counsel to co-appellant Jaime Rayo.

Barry Bassis